

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ASHTYN KENNETH JAMES
LEWANDOWSKI, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

SEAN CHRISTOPHER LEWANDOWSKI,

Respondent-Appellant,

and

JAMEY LEWANDOWSKI,

Respondent.

In the Matter of ALEXYS VICTORYA ROSE
CANTRELL and ASHTYN KENNETH JAMES
LEWANDOWSKI, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

JAMEY LEWANDOWSKI,

Respondent-Appellant,

and

SEAN CHRISTOPHER LEWANDOWSKI and
DONALD RAYMOND CANTRELL,

UNPUBLISHED
July 17, 2007

No. 276416
Grand Traverse Circuit Court
Family Division
LC No. 04-001049-NA

No. 276512
Grand Traverse Circuit Court
Family Division
LC No. 04-001049-NA

Respondents.

In the Matter of ALEXYS VICTORYA ROSE
CANTRELL, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

DONALD RAYMOND CANTRELL,

Respondent-Appellant,

and

JAMEY LEWANDOWSKI,

Respondent.

No. 276576
Grand Traverse Circuit Court
Family Division
LC No. 04-001049-NA

Before: Meter, P.J., and Talbot and Owens, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right from the trial court orders terminating their parental rights to the minor children under MCL 712A.19b(3)(g) and (j). We affirm.

I. Background and Procedural History

Respondent Sean Christopher Lewandowski is the father of Ashtyn Kenneth James Lewandowski (dob: November 28, 2004). Respondent Donald Raymond Cantrell is the father of Alexys Victorya Rose Cantrell (dob: May 18, 2003). Respondent Jamey Lewandowski is the mother of both minor children and is married to Respondent Lewandowski.

In early April 2004, Alexys first came to the attention of protective services. At that time, respondent mother voluntarily sought admission into Munson Medical Center for detoxification from the prescribed medication, Xanax. Respondent mother contacted protective services indicating concern that the minor child was in the care of the maternal grandmother and that the child's father, Cantrell, was temporarily residing at that location having recently been released from prison. Protective services determined temporary placement of Alexys with the maternal grandmother to be appropriate pending respondent mother's hospital discharge. Upon discharge, protective services outlined for respondent mother the terms and conditions she must

meet for return of the minor child. Alexys was returned to respondent mother on April 12, 2004, and only a few days later, during a follow-up home visit, it was determined that respondent mother had been in a physical altercation with Lewandowski resulting in her obtaining a black eye. The incident had begun as an argument between respondent mother and Lewandowski and escalated from outside the home into the minor child's bedroom. Protective services filed a petition and Alexys was removed from the home on April 18, 2004. Lewandowski was charged and sentenced to jail for the incident. Shortly after the removal of Alexys, Cantrell was also sentenced to a year in jail on separate, unrelated charges and was not released until October 2005.

Approximately seven months after Alexys's removal from the home by protective services, Ashtyn was born prematurely. The child's father, Lewandowski, was jailed immediately following the child's birth. Following discharge from the neonatal intensive care unit, the minor child was removed and placed in foster care. At this time, Alexys remained in placement outside the home. Both minor children remained in foster care until April 2005. However, return of the children to respondent mother and their respective fathers was short-lived. On November 1, 2006, Cantrell and Lewandowski became involved in a verbal and physical altercation at the home of Lewandowski and respondent mother, resulting in Lewandowski stabbing Cantrell and the initiation of the current petition for termination of parental rights.

While the November 2006 incident was the culminating event in seeking permanent removal and placement of the minor children, it was not an isolated event. The relationship between the three respondents, during the lives of the minor children, has been tumultuous at best and violent at its worst, resulting in multiple instances of police involvement. Lewandowski and respondent mother were involved in two reported incidents of domestic violence, resulting in physical injury. One of the incidents occurred at a local hotel and involved extensive property damage within the hotel room. In addition, Lewandowski and respondent mother reported several incidents during which they engaged in the destruction of personal property, involving hundreds of dollars of damages, when angry with one another. Lewandowski and respondent mother were determined to be under the influence of alcohol during some of these incidents. Before Ashtyn's birth, Lewandowski had nine arrests, ranging from assault and battery and domestic violence to malicious destruction of property, larceny, and fraud. After Ashtyn's birth, Lewandowski was arrested twice, for Operating While Intoxicated (2nd offense) resulting in 120 days in jail and two years' probation, and a misdemeanor malicious destruction of property involving 93 days in jail. Psychological evaluation of Lewandowski was not conclusive, but indicated, "the volatility of the co-parent relationship is the most probable factor that would interfere with the child's well-being." Concern was expressed that, without treatment intervention, Lewandowski's rigid temperament and paranoid tendencies would lead to maintenance of "a very rigid approach to child-rearing, his tendency to be suspicious, paranoid, and personalize other peoples [sic] behavior could lead him to misinterpret the child's behavior as being aimed against him, and therefore respond with excessive force or emotional intensity."

A similar pattern of dysfunctional behavior was evidenced between respondent mother and Cantrell. In 2004, respondent mother asserted Cantrell pushed her and threw items at her during a dispute. During that incident, Cantrell was arrested for possession of cocaine. In August 2006, police were called to Cantrell's residence and found him unconscious and

requiring resuscitation. It was determined that Cantrell, in violation of his parole, had been smoking crack cocaine for a straight 24-hour period. Cantrell contended that respondent mother had offered to sell him cocaine and had also been involved in using cocaine earlier in the day with him. Cantrell's criminal history began in 1977, with 27 arrests before Alexys's birth, including arrests for assault and battery, breaking and entering, larceny, retail fraud, receiving and concealing stolen property, delivery and/or manufacture of cocaine, and the unauthorized driving away of an automobile. After Alexys was born, Cantrell had five additional arrests involving the delivery and/or manufacture of cocaine, probation and parole violations, domestic violence and use of cocaine.

Respondent mother also had a history of verbally aggressive and physically assaultive behaviors. Not only did she break the windows of Lewandowski's vehicle and destroy hotel room items when engaged in disputes with Lewandowski, she was involved in a reported altercation with her mother and, in January 2007, forced her way into Cantrell's apartment and physically attacked him. A psychological evaluation of respondent mother, completed in conjunction with a referral by the Family Independence Agency to evaluate her "emotional organization and capacity to care for her daughter," identified respondent mother's "dramatic narcissism," which leads to her "ignor[ing] others needs," as well as "profound antisocial strivings." The examiner determined respondent mother "exhibits poor judgment and is often unpredictable and impulsive" and "often feels resentful and angry and has difficulty controlling or expressing her emotions appropriately." Diagnostic formulations included cocaine abuse in conjunction with possible borderline personality disorder and bipolar disorder. Respondent mother's prognosis for change was identified as being "guarded to poor." Overall, the psychological examiner opined that respondent mother "is emotionally unstable" and did not recommend the return of her child into her care.

II. Standard of Review

This Court reviews for clear error both a trial court's determination that a ground for termination of parental rights has been established by clear and convincing evidence and the trial court's decision regarding the best interests of the child. *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). "A circuit court's decision to terminate parental rights is clearly erroneous if, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re JK*, 468 Mich 202, 209-210; 661 NW2d 616 (2003).

III. Analysis

The trial court did not err by finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The primary conditions, which led to the adjudication, were domestic violence between the respondents, repeated contacts with police, drug use and frequent incarceration of the children's respective fathers.

The record demonstrates that all respondents continued to engage in a lifestyle characterized by volatility, domestic violence and substance abuse. Even the witnesses that provided testimony favorable to respondents regarding their love for the minor children and the provision of necessities and care, indicated concern regarding the frequent and explosive

arguments that occurred, particularly between Lewandowski and respondent mother, which often escalated into incidents of domestic violence encompassing physical assaults and property destruction. Lewandowski and respondent mother only minimally cooperated with recommended counseling for anger management and to improve their ability to communicate, with little to no improvement in these skills being demonstrated. The evidence clearly indicated that respondents failed to address and resolve the issues of domestic violence and substance abuse, which led to the proceedings to terminate their parental rights.

Both Lewandowski and Cantrell evidenced long histories of criminal behavior, and were unavailable during a significant portion of each of their children's lives due to being incarcerated. The minor children also experienced significant periods of time out of the home because of the chaotic and unstable nature of the temperaments of respondents, which frequently erupted into incidents of domestic violence. According to the foster mother, the children were impacted by the violent behavior of respondents, as evidenced by their use of abusive and foul language at a very young age and the exhibition of physically aggressive and threatening behavior by Alexys toward her younger brother. Although the evidence did not show that respondents had ever engaged in any direct physical harm to the children, with all witnesses verifying that the basic physical needs of the children were sufficiently met, testimony indicated that the severity and prolonged nature of the children's exposure to incidents of domestic violence inflicted significant emotional harm and placed them at future risk. Although respondents averred that the minor children did not directly observe the violent episodes, there can be no reasonable dispute that they were able to observe the aftermath of the violence, including bruises and injuries to the respondents and physical disruption and destruction of their environment. Further, given the intensity of the arguments and incidents described, the children could not have avoided hearing the violent encounters and threatening language emanating from the adults in their lives.

IV. Conclusion

Termination of respondents' parental rights pursuant to MCL 712A.19b(3)(g) was proper. Respondents failed to provide proper care of the minor children by routinely engaging in acts of domestic violence in their presence, frequent incarcerations, failing to follow-through on recommended treatment for psychological issues and training in anger management, and based on the continued use of illegal drugs and alcohol. The evidence demonstrated that the conditions of adjudication continued to exist and were unlikely to be rectified within a reasonable period of time, given their long-standing nature and the failure or reluctance of respondents to seek or meaningfully participate in treatment.

In addition, MCL 712A.19b(3)(j) permits a family court to terminate parental rights if "[t]here is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent." Respondents correctly contend that the record does not reveal the imposition of any physical harm on the children. However, in accordance with the statutory requirements, there is sufficient evidence that a reasonable likelihood exists that the children will be harmed if they are returned to the care of respondents. The record amply demonstrates respondents have a life-long history of anger control problems, criminal behavior leading to incarceration and substance abuse issues. Frequently, the inability of respondents to maintain self-control resulted in the infliction of verbal and physical abuse upon each other and persons closest to them and showed an abysmal

lack of consistency or dedication to involving themselves in ongoing treatment to resolve these problematic behaviors.

Affirmed.

/s/ Patrick M. Meter

/s/ Michael J. Talbot

/s/ Donald S. Owens